

FCC MAIL SECTION

Federal Communications Commission

DA 99-1335

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DISPATCHED
Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Bellevue Public Library
Bellevue, Ohio

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CC Docket No. 96-45

ORDER**Adopted:** July 6, 1999**Released:** July 6, 1999

By the Common Carrier Bureau:

1. The Common Carrier Bureau has under consideration a "Letter of Appeal" filed by Bellevue Public Library, Bellevue, Ohio (Bellevue) on April 7, 1999, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC or Administrator).¹ Bellevue seeks review of the SLD's denial of its application for discounts for telecommunications services under the schools and libraries universal service support mechanism.² For the reasons set forth below, we deny the "Letter of Appeal" and affirm the SLD's denial of Bellevue's application for discounts for telecommunications services.

I. BACKGROUND

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ The Commission's rules provide that, with one limited exception, an eligible school, library or consortium must seek competitive bids for all services eligible for support.⁴ The Commission reasoned that competitive bidding would ensure fiscal responsibility and would be the best means for ensuring that eligible schools and libraries are able to receive services at the most

¹ The Commission's rules provide that requests for review of decisions issued by the Universal Service Administrative Company (USAC or the Administrator) shall be considered and acted upon by the Common Carrier Bureau, provided, however, that requests for review that raise novel questions of fact, law, or policy shall be considered by the full Commission. 47 C.F.R. § 54.722(a). Bellevue does not raise novel questions of fact, law, or policy and therefore this matter will be acted upon by the Common Carrier Bureau.

² Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

³ 47 C.F.R. §§ 54.502, 54.503.

⁴ 47 C.F.R. § 54.504.

competitive rates.⁵

3. To comply with this competitive bid requirement, the Commission's rules require that an applicant submit to the Administrator a completed FCC Form 470, in which the applicant lists the services for which it seeks discounts.⁶ The Administrator must post the FCC Form 470 on its website and the applicant is required to wait 28 days before making a commitment with a selected service provider.⁷ The rules also require that the Administrator send confirmation to each applicant that its FCC Form 470 has been received and posted (Receipt Acknowledgment Letter). After the FCC Form 470 has been posted for 28 days, and the applicant has selected a service provider, the applicant must submit to the Administrator an FCC Form 471, which lists the services that have been ordered.⁸ If the Administrator has established a filing window, all FCC Form 471s submitted during the filing window will be treated as if they were simultaneously received.⁹ For the first funding period, the filing window opened on January 30, 1998 and closed on April 15, 1998.

4. The Commission's rules provide a limited exemption from the 28-day competitive bid requirement for applicants that have "pre-existing contracts," as defined by the Commission's rules.¹⁰ As described in the instructions for completing FCC Form 470, services ordered pursuant to a tariff do not constitute a "pre-existing contract."¹¹ Item 10 in

⁵ See *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 9002 and 9133 at paras. 480 and 686 (1997) (*Universal Service Order*), as corrected by *Errata*, CC Docket No. 96-45 (rel. June 4, 1997), *appeal pending sub nom. Texas Office of Pub. Util. Counsel v. FCC*, No. 97-60421 (5th Cir. argued Dec. 1, 1998).

⁶ 47 C.F.R. §§54.504(b)(1), (b)(3). In submitting FCC Form 470, an applicant is required to provide only general information about the services for which it seeks discounts, e.g., number of phones that require service, number of dial-up connections necessary, as well as an assessment of the applicant's existing technology that may be necessary for the effective use of eligible services, e.g., number of computers.

⁷ 47 C.F.R. §§ 54.504(b)(3) and (4); § 54.511.

⁸ 47 C.F.R. § 54.504(c). A commitment of support is contingent upon the filing of FCC Form 471.

⁹ 47 C.F.R. § 54.507(c).

¹⁰ A signed contract between an eligible school, library, or consortium for services eligible for discounts under the schools and libraries universal service support mechanism is exempt from the Commission's competitive bidding requirements as follows: (1) a contract signed on or before July 10, 1997 is exempt from the competitive bid requirements for the life of the contract; and (2) a contract signed after July 10, 1997, but before the date on which the universal service competitive bid system became operational, is exempt from the competitive bid requirements only with respect to services that are provided under such contract for the first funding period. 47 C.F.R. §§ 54.511(c)(1)(i) and (ii); 54.511(d).

¹¹ FCC Form 470, "Instructions for Completing the Schools and Libraries Universal Service Description of Services Requested and Certification Form (FCC Form 470)" at 7. See also *Federal-State Joint Board on Universal Service and Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure, and Pricing End User Carrier Common Line Charge*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72,

Block 3 of the FCC Form 470 directs the applicant to check the box if it has an existing, binding contract. If an applicant checks Item 10, the SLD will not post the FCC Form 470.¹² Applicants with existing contracts are still required, however, to wait 28 days before filing their FCC Form 471.

5. Based on Bellevue's FCC Form 471, the SLD determined that Bellevue did not have a pre-existing contract that would have exempted it from the competitive bid requirement, but rather had ordered services pursuant to a tariff. Accordingly, by letter dated December 30, 1998, the SLD denied Bellevue's request for discounts for tariffed telecommunications services on the ground that Bellevue's FCC Form 470 was not posted on SLD's website for 28 days, in violation of the Commission's competitive bid requirement. Bellevue appealed the SLD's decision on January 27, 1999. In its appeal, Bellevue claimed that its FCC Form 470 was in fact posted on the SLD's website.¹³ In support of this claim, Bellevue submitted a dated copy of the FCC Form 470 signature page and a copy of the Universal Service Control Number (USCN) assigned to it when it filed its FCC Form 470. Bellevue also argued that, because the Receipt Acknowledgment Letter stated that the SLD had received its properly completed FCC Form 470, any problem with its FCC Form 470 should have been raised in the Receipt Acknowledgment Letter.¹⁴ Bellevue further noted that the Receipt Acknowledgment Letter indicated that "[a]ccording to FCC rules, because your Form 470 lists only descriptions of services currently being provided under pre-existing contracts, it will not be necessary to post your application on the SLC web site."¹⁵ In this regard, Bellevue appears to have argued, in the alternative, that, according to the Receipt Acknowledgment Letter, it was not required to post its FCC Form 470. In any event, Bellevue claimed that it complied with the 28-day waiting period before filing its FCC Form 471.

6. On March 11, 1999, the SLD affirmed its initial funding decision and denied Bellevue's appeal.¹⁶ In the "Administrator's Decision on Appeal," the SLD explained that Bellevue's request for tariffed telecommunications services was not posted on the web site for 28 days because Bellevue had checked Item 10 in Block 3 on FCC Form 470, which directs

Fourth Order on Reconsideration in CC Docket No. 96-45 and Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 5318, 5441 at para. 217 (1998); *Federal-State Joint Board on Universal Service*, Tenth Order on Reconsideration, CC Docket No. 96-45, 14 FCC Rcd 5983 (1999).

¹² 47 C.F.R. § 54.511(c).

¹³ Letter from Molly Carver, Director, Bellevue Public Library, to the Schools and Libraries Corporation, dated January 27, 1999 (January 27 Appeal Letter) at 1.

¹⁴ *Id.*

¹⁵ January 27 Appeal Letter at 1-2.

¹⁶ Letter from the Schools and Libraries Division, Universal Service Administrative Company to Molly Carver, Bellevue Public Library, "Administrator's Decision on Appeal," dated March 11, 1999.

the applicant to check the box if the applicant has an existing, binding contract.¹⁷ The SLD further explained that the only exemption from the Commission's competitive bid requirement is for services that were the subject of an existing contract prior to January 30, 1998.¹⁸ Because Bellevue did not have a "pre-existing contract," the SLD denied Bellevue's appeal of the SLD's funding decision for failure to comply with the competitive bid requirement.

II. DISCUSSION

7. In Bellevue's request for review of the SLD's decision that is now before us, Bellevue reiterates the arguments previously presented to the SLD.¹⁹ For the reasons set forth below, we conclude that the SLD properly denied Bellevue's application for discounts for tariffed telecommunications services.

8. Consistent with our obligation to conduct a *de novo* review of appeals of decisions made by the Administrator,²⁰ we have reviewed Bellevue's FCC Form 470 and FCC Form 471. We have confirmed that Bellevue did check Item 10 in Block 3 of FCC Form 470 indicating that it had a "pre-existing contract."²¹ Based on Bellevue's indication in its application that it had a pre-existing contract, the SLD, consistent with the Commission's rules, did not post Bellevue's FCC Form 470 on its website. Bellevue's submission of a dated copy of the FCC Form 470 signature page and a copy of the USCN is not evidence that its FCC Form 470 was in fact posted. Pursuant to the Commission's rules, it is SLD's responsibility to post to its website all properly filed FCC Form 470s²² and SLD will not post FCC Form 470s if the applicant has checked Item 10 in Block 3 of FCC Form 470. Because Bellevue indicated that service would be received pursuant to a "pre-existing contract" by checking Item 10 in Block 3, the lack of posting and competitive bidding was due to

¹⁷ Administrator's Decision on Appeal at 1. Specifically, Item 10 on FCC Form directs the applicant to "[c]heck if applicant seeks discounts only for eligible services based on one or more **existing, binding** contract(s). . . ." See FCC Form 470, Block 3, Item 10. The instructions for Item 10 in Block 3 of FCC Form 470 state that "[i]f you are purchasing telephone service at tariffed rates and have not signed a binding contract, you cannot treat this arrangement as an existing contract." FCC Form 470, "Instructions for Completing the Schools and Libraries Universal Service Description of Services Requested and Certification Form (FCC Form 470)" at 7.

¹⁸ Administrator's Decision on Appeal at 1.

¹⁹ See *supra* para. 5.

²⁰ 47 C.F.R. § 54.723(a).

²¹ Bellevue indicates that perhaps its application was confused with an application filed by another Bellevue Public Library, which is located in Iowa. The FCC Form 470 and FCC Form 471 that we reviewed were filed by Bellevue Public Library of Ohio. We also note that, to the extent Bellevue raises an issue about whether there was an error in the Service Provider Identification Numbers listed on the Funding Notification Synopses, such an error does not in anyway change the conclusion reached here.

²² 47 C.F.R. § 54.504(b)(3).

Bellevue's own error and thus disqualified it from receiving approval.²³

9. We also have confirmed that Bellevue's FCC Form 471 indicates that it would receive the telecommunications services for which it sought universal service support under the schools and libraries universal service support mechanism pursuant to a tariff, not an existing contract. Accordingly, because only applicants with existing contracts, as defined in 47 C.F.R. § 54.511(c)(1), are exempt from the Commission's competitive bid requirement, and because the instructions for FCC Form 470 clearly state that tariffs do not constitute "pre-existing contracts," we find that the SLD properly denied Bellevue's funding request for failure to comply with the 28-day competitive bid requirement. The fact that Bellevue waited for 28 days before filing its FCC Form 471 does not cure its failure to comply with the Commission's competitive bid requirement, which ensures the most efficient and effective use of funds under the schools and libraries universal service support mechanism.²⁴

10. Finally, to the extent the Receipt Acknowledgement Letter indicated that it would not be necessary for the SLD to post Bellevue's FCC Form 470 because the services for which it sought support were being provided under pre-existing contracts, we find that Bellevue was on notice once it received the Receipt Acknowledgment Letter that there was an error in its application. Indeed, had Bellevue recognized its mistake at that time, there would have been sufficient time for Bellevue to resubmit its FCC Form 470 for posting on the SLD's website for 28 days and to submit its FCC Form 471 within the filing window.

²³ We note that, in light of the thousands of applications that the SLD must review in each funding year, it would be administratively impossible for the SLD to confirm with each applicant at the time the FCC Form 470 is filed that the applicant properly checked Item 10 in Block 3. For this reason, we reject Bellevue's claim that any problem with its FCC Form 470 should have been raised in connection with its Receipt Acknowledgment Letter. Indeed, absent contacting each applicant to confirm that the applicant properly checked Item 10 in Block 3, the SLD could not have known of the error in Bellevue's FCC Form 470 until Bellevue filed its FCC Form 471 in which it indicated that it was ordering telecommunications services pursuant to a tariff, and not pursuant to a "pre-existing contract." We note that, when applying for discounts under the schools and libraries universal service support mechanism, each applicant must take responsibility for understanding the Commission's rules. We also note that the SLD has a website that provides online help with the application process and also has a toll-free helpline.

²⁴ *Universal Service Order*, 12 FCC Rcd at 9029, para. 480.

11. ACCORDINGLY, IT IS ORDERED, that the "Letter of Appeal" filed by Bellevue Public Library, Bellevue, Ohio, on April 7, 1999 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read 'L. M. Zaina', followed by a horizontal line.

Lisa M. Zaina
Acting Deputy Bureau Chief
Common Carrier Bureau